

**LYNCHBURG CITY COUNCIL**  
**Agenda Item Summary**

MEETING DATE: **July 13, 2004**

AGENDA ITEM NO.: 16

CONSENT:

REGULAR: **X**

CLOSED SESSION:  
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Rezoning – 1042 Florida Avenue, R-3 to B-2 (Conditional)**

RECOMMENDATION: Approval of the requested rezoning petition.

SUMMARY: Kenneth and Valerie Braxton are petitioning to rezone approximately 2.43 acres at 1042 Florida Avenue from R-3, Two-Family Residential District to B-2, Local Neighborhood Business District (Conditional) to allow the use of an existing building as a restaurant. The Planning Division recommended approval of the rezoning because:

- Petition agrees with the *Comprehensive Plan* which shows a mixture of medium density residential, resource conservation, public uses and institutional uses in the area. The *Comprehensive Plan* encourages the reuse of existing buildings.
- A small family owned restaurant should be compatible with the mixed uses in the area.

PRIOR ACTION(S):

June 9, 2004: Planning Division recommended approval of the rezoning.  
Planning Commission waived the 21 day submittal requirement for proffers.  
Planning Commission recommended approval 5-0 (with 2 members absent) of the rezoning. The petitioner offered the following additional proffers at the Planning Commission meeting.

1. It is being stated that 1042 Florida Avenue (The Soul Food X-Press) will not serve alcoholic beverages, neither will there be parties of any kind.
2. The Soul Food X-Press would also like to have this property zoned for a beauty/barber salon etcetera, in the event that the restaurant does not succeed.

FISCAL IMPACT: N/A

CONTACT(S):

Rachel Flynn / 455-3902

Tom Martin / 455-3909

ATTACHMENT(S):

- Ordinance
- PC Report
- PC minutes
- Site Plan
- Speaker sign up sheet

REVIEWED BY: lkp

## ORDINANCE

AN ORDINANCE CHANGING A CERTAIN AREA FROM R-3, TWO FAMILY RESIDENTIAL DISTRICT TO B-2, LOCAL BUSINESS DISTRICT (CONDITIONAL).

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG That in order to promote the public necessity, convenience, general welfare, and good zoning practice that 35.1 of the code of the City of Lynchburg, Virginia, 1981, as amended, be and the same is hereby further amended by adding thereto Section 35.1-76.\_\_\_\_, which section shall read as follows:

Section 35.1-76.\_\_\_\_. Change of a certain area from R-2 Two Family Residential District to B-3 Local Neighborhood Business District (Conditional). The area embraced within the following boundaries . . . .

Beginning at a point on the right of way line of Florida Avenue to said point being the south westerly corner of the property, thence leaving the said right of way line and following the line between Tax Map No. 048-06-002 and Tax Map No. 48-06-01, S 82° 53' 30" E 89.95 feet to a point; thence leaving the line between Tax Map No. 048-06-002 and Tax Map No. 048-06-001 and following a new rezoning line the following calls, S 2° 33' 05" E 111.91 feet to a point; thence S 32° 56' 20" W 26.98 feet to a point; thence S 78° 19' 14" W 152.61 feet to a point; thence N 66° 40' 54" W 48.70 feet to a point on the right of way line of Florida Avenue; thence with the right of way line of Florida Avenue the following calls back to the point of beginning N 48° 52' 05" E 124.56 feet; N 15° 25' 59" E 78.05 feet to the point of beginning containing 0.48 acres.

Please Note: The bearing basis for this description is based on a plat in Plat Cabinet 7, Page 191 and is a portion of the property acquired by James R. Nowlin, Sr. and Carentha Nowlin (Tax Map Parcel No. 048-06-001). This legal description is intended only for the use of rezoning a portion of the property of James R. Nowlin, Sr. and Carentha Nowlin.

. . . is hereby changed from R-2, Two Family Residential District to B-2, Local Neighborhood Business District (Conditional), subject to the condition setout herein below which was voluntarily proffered in writing by the owner, namely James R. Nowlin, to wit:

No alcoholic beverages will be served or permitted in the restaurant or on the restaurant property.

And the Director of Community Planning and Development shall forthwith cause the "Official Zoning Map of Lynchburg, Virginia," referred to in Section 35.1-4 of this chapter to be amended in accordance therewith.

Adopted:

Certified:

\_\_\_\_\_  
Clerk of Council

087L

The Department of Community Planning & Development  
City Hall, Lynchburg, VA 24504 434-455-3900

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**To:** Planning Commission  
**From:** Planning Division  
**Date:** June 9, 2004  
**Re:** **REZONING: R-3, Two-Family Residential, to B-2 Local Neighborhood Business (Conditional), at 1042 Florida Avenue.**

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**I. PETITIONER**

Kenneth and Valerie Braxton, 1409 Taylor Street, Lynchburg, VA 24504

**Representative:** Kenneth and Valerie Braxton, 1409 Taylor Street, Lynchburg, VA 24504

**II. LOCATION**

The subject property is a tract of about 2.43 acres located at 1042 Florida Avenue, Lynchburg, VA 24504

**Property Owners:** James R. Nowlin, 2120 Florida Avenue, Lynchburg, VA 24501

**III. PURPOSE**

The purpose of this petition is to allow use of the existing structure as a restaurant, with offstreet parking.

**IV. SUMMARY**

- Petition agrees with the Comprehensive Plan which shows a mixture of Medium Density Residential, Resource Conservation, Public Use, and Institutional land uses in this area, and which encourages the reuse of existing structures.
- Petition agrees with the Zoning Ordinance in that rezoning to a B-2., Local Neighborhood Business District will be adjacent to an existing B-2 District and will allow reuse of an existing structure.
- Petition proposes the use of an existing structure as a restaurant, with offstreet parking.

**The Planning Division recommends approval of the rezoning petition.**

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**V. FINDINGS OF FACT**

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recommends Medium Density Residential and Resource Conservation land uses for this area. Nearby are Public Use and Institutional uses. A small family-owned restaurant intended to serve the neighborhood will be compatible with the mix of uses currently in the area. The Comprehensive Plan also encourages the reuse of existing structures whenever possible. The existing structure on the property served most recently as a restaurant and is suitable for that purpose.
2. **Zoning.** The subject property was annexed into the City in 1908. The property was zoned for industrial uses in 1930, for heavy industrial uses in 1949, and for manufacturing in 1960. The existing R-3, Two-Family Residential, and R-C, Resource Conservation, zoning was established in 1978 with the adoption of the current *Zoning Ordinance*. In 2003, the City Council approved a Conditional Use Permit (CUP) for the property to allow use of the existing structure as a church sanctuary with parking. However, the church never opened on the property. The adjacent parcel fronting on Florida Avenue between the subject property and the Norfolk/Southern railroad tracks is zoned B-2, Local Neighborhood Business. Thus, rezoning the subject property to B-2, Local Neighborhood Business, would simply switch the property from its current residential zoning to the adjacent district.
3. **Proffers.** The petitioner voluntarily submitted the following proffer(s) with the rezoning application:
  - No alcoholic beverages will be served or permitted in the restaurant or on the restaurant property.
4. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the proposed rezoning.
5. **Surrounding Area.** There have been four items requiring City Council approval in the immediate area:

- 8/13/1991: City Council approved a rezoning of the property at 1600-1610 Hudson Street from I-2, Light Industrial, to R-3C, Two-Family Residential (Conditional), to allow the construction of six single-family dwellings on property owned by the Lynchburg Redevelopment and Housing Authority.
  - 6/9/1998: City Council approved a rezoning of the property at 1700 Hudson Street from I-2, Light Industrial, to R-3C, Two-Family Residential (Conditional), to allow the construction of a residence.
  - 8/14/2001: City Council approved a rezoning of the property at 1350 Florida Avenue from R-3, Two-Family Residential, and R-C, Resource Conservation, to B-5C, General Business (Conditional), to allow use of the property for retail sales and outside storage of surplus building materials.
  - 1/14/2003: City Council approved a CUP at 1040-1042 Florida Avenue (the property now subject of this rezoning petition) for use of the existing structure as a sanctuary, with offstreet parking.
6. **Site Description.** The subject property is bounded to the north by residences, to the west across Florida Avenue by residences, to the east by vacant residentially zoned property, and to the south by vacant resource conservation land.
7. **Proposed Use of Property.** The purpose of the rezoning is to allow use of the existing structure as a restaurant and to provide offstreet parking on the site.
8. **Traffic and Parking.** The City Traffic Engineer has no comments of concern regarding the subject petition. The proposed use is not expected to generate a significant amount of traffic.
9. **Storm Water Management.** A storm water management plan will not be required for the use of the existing structure as a restaurant, because disturbed areas will not exceed 1,000 square feet.
10. **Impact.** The current structure on this property was built in 1948 and was used most recently for a restaurant. It is not suitable for use as a residence, as permitted under the current zoning. The applicants have voluntarily agreed not to serve alcohol at their restaurant or to allow alcohol to be consumed on the premises in order to avoid negative impacts on the surrounding neighborhood. The building is now vacant and in need of maintenance, such as painting and landscaping. Returning a business to this location will benefit the neighborhood by ensuring that the building is maintained. There is ample parking on the site for restaurant patrons.
11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan on May 18, 2004. Comments related to the proposed use were minor in nature and have or will be addressed by the developer prior to final site plan approval.
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## VI. PLANNING DIVISION RECOMMENDATION

**Based on the preceding Findings of Fact, the Planning Commission recommends to the City Council approval of the petition of Kenneth and Valerie Braxton for a rezoning from R-3, Two-Family Residential, to B-2C, Local Neighborhood Business (Conditional), at 1042 Florida Avenue for the use of the existing structure as a restaurant with offstreet parking.**

This matter is respectfully offered for your consideration.

William T. Martin, AICP  
City Planner

pc: Mr. L. Kimball Payne, III, City Manager  
Mr. Walter C. Erwin, City Attorney  
Ms. Rachel O. Flynn, Director of Community Planning & Development  
Mr. Bruce A. McNabb, Director of Public Works  
Mr. R. Douglas Dejarnette, Fire Marshal  
Ms. Judith C. Wiegand, Senior Planner  
Mr. J. Lee Newland, Director of Engineering

Mr. Gerry L. Harter, Traffic Engineer  
Mr. Robert Drane, Building Commissioner  
Mr. Arthur L. Tolley, Zoning Official  
Mr. Robert S. Fowler, Zoning Official  
Mr. Kent White, Environmental Planner  
Mr. Kenneth Braxton and Mrs. Valerie Braxton, Petitioners/Representatives

## **VII. ATTACHMENTS**

### **1. Vicinity Zoning Pattern**

(see attached map)

### **2. Vicinity Proposed Land Use**

(see attached map)

### **3. Site Plan**

(see attached site plans)

## MINUTES FROM THE JUNE 9, 2004 PLANNING COMMISSION MEETING

The minutes have been reviewed but not approved by the Commission

Petition of Kenneth and Valerie Braxton to rezone approximately 1.85 acres at 1042 Florida Avenue from R-3, Two-Family Residential District to B-2, Local Neighborhood Business District (Conditional) to allow the use of an existing structure as a restaurant.

Mr. Tom Martin, City Planner, explained that the building on this site had historically been used as a restaurant. He added that the building was not appropriate for use as a residential building, which is what it was currently zoned. He said the Future Land Use Map designated this area for Medium-Density Residential use; however, institutional and other public uses were in the vicinity. Mr. Martin told the Commission that a small family owned restaurant would be an appropriate use providing that it was intended to serve the residents of the neighborhood and would be compatible with the area. He said the Planning Division recommended approval of this rezoning.

Ms. Valeria Braxton and Mr. Kenneth Braxton, 1409 Taylor Street, represented this request as the petitioners. Ms. Braxton explained that they wanted to open a Christian-based, family oriented restaurant, and added that there would be no alcohol or parties at the restaurant. She added that they wanted to upgrade the neighborhood.

Mr. Braxton said the neighborhood was a drug-infested area and he and his wife want to make that negative into a positive.

Mr. Martin explained that a few years ago the Commission approved a CUP for a different petitioner to establish a church in this exact building, but that CUP lapsed and the church never opened. He said this petition was to rezone the site so the approval would be a permanent change. He noted that the petitioners did have additional proffers to submit at this meeting. Mr. Martin said the City staff had been working with Ms. Braxton on this request, and at first was concerned that the petitioners were limiting the use of the building for restaurant use only. He said the Planning staff explained to her that if the restaurant did fail to materialize, then she would have to come back through the rezoning process, which would be time consuming and expensive. He added that the new proffers being submitting at this meeting would eliminate alcoholic beverages being served in the restaurant and would also eliminate parties, but would allow a beauty salon or barbershop at the site if the restaurant did not materialize. He said the staff did not have a problem with those additional uses.

Chair Dahlgren asked if the petitioners eventually decided to sell liquor would they have to get a liquor license. He added that the restaurant would be a big improvement to the neighborhood.

Mr. Martin explained that they would have to rezone the property before that could happen.

After further discussion Commissioner Flint made the following motion, which was seconded by Commissioner Worthington and passed by the following vote:

"That the Planning Commission waive the 21-day submittal requirement of Section 35.1-43.1 of the Zoning Ordinance to accept proffers submitted by Kenneth and Valerie Braxton to rezone approximately 1.85 acres at 1042 Florida Avenue from R-3, Two-Family Residential District to B-2, Local Neighborhood Business District (Conditional) to allow the use of an existing structure as a restaurant."

AYES:	Dahlgren, Flint, Hamilton, Pulliam, Worthington	5
NOES:		0
ABSTENTIONS:	Echols	0

Commissioner Hamilton made the following motion, which was seconded by Commissioner Worthington and passed by the following vote:

"That the Planning Commission recommends to the City Council approval of the petition of Kenneth and Valerie Braxton for a rezoning from R-3, Two-Family Residential, to B-2C, Local Neighborhood Business (Conditional), at 1042 Florida Avenue for the use of the existing structure as a restaurant with off street parking."

AYES:	Dahlgren, Flint, Hamilton, Pulliam, Worthington	5
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NOES:  
ABSTENTIONS:Echols

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